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ABSTRACT

This presentation introduces the methods of negotiation and mediation in transdisciplinary decision-making, and applies the methods specifically to the educational needs and placements of students with disabilities. Four stages of mediation are described: problem identification, generation of problem-solving options, evaluation of options, and agreeing to solutions. Common problems arising at each stage are discussed, such as taking an inflexible stand on an issue, emotional outbursts, prolonged repetition of the same points, personal attacks, premature acceptance of a "solution" without considering all of the relevant variables, and resisting agreement. Mediator's responses to each type of problem are also presented, along with the rationale for each mediator response. (Author/JDD)

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Negotiation and Mediation in Transdisciplinary Decision-Making

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Abstract

This presentation introduces the methods of negotiation and mediation. Four stages of mediation in the process of transdisciplinary decision-making are described: problem identification, generating problem-solving options, evaluating options and agreeing to solutions. Common problems arising at each stage are discussed: taking an inflexible stand on an issue; emotional outbursts; prolonged repetition of the same points; personal attacks; premature acceptance of a "solution" without considering all the relevant variables, and resisting agreement. An example of a mediator's responses to each type of problem are presented as is the rationale for each of the responses.

An example:

Two men are sitting on their favorite stools in a bar in Nome, Alaska.

One man asks the other if he would mind if the window was opened.

The other man says, No! I don't want the window open. CONFLICT

They begin to negotiate to resolve the dispute; they try to reach a compromise.

I'll only open it 5 inches.

You can open it 1/2 inch but no more.

Its not worth having the window open only 1/2 an inch.

Negotiation hasn't worked. No one is happy with the compromise.

The bartender hears the discussion and comes over to mediate the problem.

The bartender asks each of them, "What's the problem?"
Each disputant states his position:

I want the window open.
I want the window closed.

The bartender asks them why they want the window open or closed (what are their underlying reasons)

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I can't stand the smoke in here; we need some fresh air.

I have a cold and I don't want to sit in a draft.

The bartender doesn't take sides or suggest a solution, but rephrases the problem, "Is there a way to get fresh air and avoid a draft?"

The bartender looks slowly around the room to expand their perspective.

After consideration, the men agree to open the door in the next room.

Mediation is intended to find a solution that satisfies the needs of both disputants and avoid a war of wills.

In many disputes, negotiation is the first stage. People discuss the problem and try to find solutions themselves.

Unfortunately, their strategies are usually either:

a) to take a position and stick with it OR

b) to compromise as little as possible and offer a solution that pleases neither.

Mediation is commonly used when negotiation breaks-down.

In the bar example, the bartenders strategy was to:

a) get the disputants to leave their positions ("I want the window open: I want it closed");

b) focus on the reasons why each disputant had taken his position; and

c) search for other solutions that would satisfy the underlying needs of both people.

The major goal of mediation is to help the disputants reach an agreement that is mutually acceptable. To find a solution in which both disputants are winners, not losers and winners.

The bartender did not suggest a solution but helped the men to find their own solution.

Any solution the bartender might have suggested may have be interpreted as taking sides and may have been rejected by one or both participants.

A mediator is a communications manager insuring open and equal communication

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Arbitration is sometimes a third stage in dispute management.

In arbitration, a third party hears both sides of a dispute and imposes a solution.

For example, asking one of the men to move way from the smoke.
or asking the other man to move away from the window.

Often in transdisciplinary decision-making, when you get a group of professionals from different disciplines and parents discussing student placements and programs, disputes arise.

If disputes are common and destructive, a mediator can be appointed to facilitate decision-making.

Otherwise, people at the meeting can learn negotiation skills.

The following references describe skills required in both negotiation and mediation.

Gallant, C.B. (1982) Mediation in special education disputes. Silver Springs, MD: National Association of Social Workers. Discusses rationale, model and training program for educational mediation relating to conflict between parents, teachers and boards, regarding assessment, placement and programs.

Fisher, R. & Ury, W. (1981). Getting to YES, Negotiation agreement without giving in. New York, NY: Viking Penguin. The authors from the Harvard Negotiation Project describe methods of negotiation and coping with common problems like emotional outbursts.

Fisher, R. and Brown S. (1988). Getting together. Boston: Houghton and Mifflin. Offers insights and methods that help build more constructive relationships in a wide variety of settings, international to personal. Identifies a series of common elements crucial to the success of any working relationship, and offers a set of practical guidelines for achieving those elements.

Baine, D. (1989 submitted for publication). Mediation; The process.

Consider the following scenario:

A group of professionals from various disciplines are meeting with parents to discuss methods of coping with a student having a severe behavior management problem.

Someone has suggested a restrictive placement in a hospital unit where medications can be administered and where more environmental control can be exercised.

The mother is outraged that the boy would be associated with such a facility.

For philosophic reasons, the teacher is adamantly against more intrusive, segregated placements.

And the psychologist is being personally attacked for his views.

The meeting is extremely emotional. The participants have each taken a definite position and are unwilling to change.

The task is to:

a) help the participants find a solution that will best serve the needs of the boy;

b) give each participant a fair and equal opportunity to express his/her point of view; and

c) find solutions that are agreeable to all of the participants.

Some strategies:

Stages of negotiation and mediation.

1. Problem identification.
2. Generating problem-solving options.
3. Evaluating options.
4. Agreeing to solutions.

Problem identification:

Placement in a hospital facility has been recommended as a solution.

Before we can evaluate the solution, must have a clear understanding of the problem

Mediator's role

a. Tell the disputants to avoid taking a stand, temporarily avoid deciding on a treatment program.

   Instead, have them define the boy's problems and needs.

   The boy's problems and needs will determine the nature of the program required.

b. Tell the disputants you will help them find a solution (a treatment program) to fit the boy's needs; their job will be to describe the boy's problems and needs.

c. Give everyone equal time to speak.

d. Help the disputants understand (not necessarily accept) the rationale behind each others suggestions.

e. Ask for clarification and additional information as required.

f. Acknowledge emotions and their legitimacy while orienting the disputants to the task.

Coping with problems that arise during problem identification:

I am going to describe a number of problems that commonly occur during mediation and suggest some methods of coping with the problems.

However, since there is not simply one solution to each problem, I would like hear your suggestion as well.

First Problem: How would you respond to the mother's continuing emotional outbursts?

(Discussion)

Some considerations that should be made when responding to the mothers continuing emotional outbursts:

a) identify her specific concerns; acknowledge them as legitimate;

b) don't react to the emotions (that is, don't respond with counter emotions) - react to the content and focus on problem-solving;

c) refocus on problem identification; and

d) acknowledge the mother as a valuable source of information (in the meeting, she may feel quite threatened by a group of professionals and, as a results, she may be quite defensive and aggressive).

A mediator may have responded as follows.

Tape: "O.K., Mrs. Miller, I think I understand how you feel."

Confirm: "You think it would be devastating for Lorne to be placed in a hospital unit for emotionally disturbed children?"

(leave time for confirmation or disconfirmation)

"You know, you've see Lorne in the home and the community over a number of years."

"We want your observations.

What do you see as Lorne's needs?
What kinds of behavioral problems does usually have?
And, what considerations do you think should be made when selecting a suitable program?"

Time: it is important that the mother does not get too much time to state her views without giving other people a chance to speak.

If the mother's views are in conflict with those of other people in the group, the longer they have to wait before responding, the more emotional and potentially damaging their responses may be.

It is frequently important to state two rules in advance:

- everyone will have equal opportunity to speak;

- have everyone agree: there will be no interruptions; if you have an important point to make: write it down and we will get to it later.

Second Problem: How would you handle the teacher who fixates on repeatedly expresses her philosophic rejection of the idea of a hospital placement?

(Discussion)

Here are some considerations that should be made when responding to the teacher:

a) express understanding of the teacher's perspective;

b) confirm your interpretation of her position;

c) refocus the teacher on problem identification;

d) acknowledge the teacher as a valuable source of information.

A mediator may have responded in the following manner:

"Thanks, I think we understand your concerns."

Confirm: "You think that, on principle, restrictive placements like the hospital setting are generally unsuitable for problems of this nature?"

(leave time for clarification if required)

a) "You have been working with Lorne for 4 months now and with other students like him for a number of years."

b) "From your perspective: what are Lorne's needs?"

c) "What types of behavioral problems does he present?"

d) "And what do you see as Lorne's curricular and behavioral program needs?"

Third Problem: How would you cope with the person who won't budge from the position that the hospital is the only right placement?

(Discussion)

Some considerations that should be made when responding to a person who insists that the hospital setting is the only right placement:

a) acknowledge the suggestion of a hospital placement as one viable option;

b) give a rationale for looking at other options; and

c) help the individual to look at other options by asking focussing questions that will force her to consider other alternatives.

A mediator may have responded in the following manner.

"O.K. a hospital placement is one option."

"What we want to do here, however, is examine as many options as possible, and find one that will best suit Lorne's needs."

"Before we select an option, we have to clearly define what Lorne's needs are."

"You have heard the perspective of some of these other people, what do you think Lorne's needs are?

What considerations do you think should be made in selecting a suitable program?"

Fourth Problem: How would you cope with the personal attacks being made on the psychologist?

(Discussion)

Some considerations that should be made when responding to the person attacks being made on the psychologist.

a) Quickly stop the personal attack from continuing by reminding the critic to focus on the task.

b) Don't attend to the emotions being expressed.

c) Avoid having the individual become antagonistic toward the mediator or feel that the mediator is taking sides.

d) Give explicit instructions for focussing on the task.

d) Don't reward the individual's inappropriate behavior by giving him a special privilege to speak after attacking the psychologist;

instead, turn to another member of the group and ask them to respond.

e) If the problem persists, it may be necessary to adjourn and caucus with the individual and establish some rules.

A mediator may have responded in the following manner.

"John, let's focus on the task.
We're trying to identify specific problems Lorne's is experiencing."

"And, we're trying to establish his specific behavioral and curricular needs."

"Jennifer, we haven't heard from you for a while."

Problem Five:

How would you cope with a premature jump from problem-identification to problem-solving, e.g., the occupational therapist has suggested a group home placement.

(Discussion)

Some considerations that should be made when responding to a premature jump to problem-solving.

Reward the contributor for her idea.

It is important, however, not to accept a solution prematurely before everyone has had a chance to speak and express their concerns and make their suggestions.

Premature acceptance of a plausible solution may be perceived of as the mediator taking sides.

As a result, the mediator's perceived impartiality is compromised; some participants may become antagonistic towards the mediator.

Premature acceptance of a plausible suggestion may not consider all of the variables other participants think are important, and may not result in the best decision being made.

It is also important to note that at no time does the mediator determine what is an acceptable or unacceptable solution -- generating and accepting solutions is up to the members of the group.

A mediator may have responded as follows.

"Well, that's an interesting suggestion; we will review that later, but first, I think we should make sure we have identified all of Lorne's critical problems."

Second Stage: Generating problem-solving options

Procedure

a) Identify as many alternative solutions as possible and evaluate them later.

Ask people to review the considerations they described during problem identification, and

try to suggest solutions that will answer as many of these considerations as possible.

Refer to brainstorming described in Fisher and Ury's Getting to YES.

b) "You don't have to accept any of the solutions you make; even initially unworkable solutions can lead to viable ones later."

d) The mediator should avoid making suggestions and thereby avoid appearing to be taking sides. Sometimes when a mediator makes suggestions, he ends up defending the suggestion and becomes a participant in the dispute.

Third stage: Evaluating Problem-solving options

a) Wherever possible use:

well defined procedures for considering alternatives

and objective standards for judging the suitability of alternative solutions.

This approach will avoid decisions being made on the basis of emotions, stubbornness or debating skills.

For example,

Gaylord Ross has written a decision model for the treatment of behavior problems. In Sailor, S. Wilcox, B. & Brown, L. (1980) Methods of instruction for severely handicapped students. Baltimore, MD: Brookes.

Evans, I, M. & Meyer, L.H. (1985). An educative approach to behavior problems. A practical decision model for interventions with severely handicapped learners. Baltimore, MD: Brookes.

Baine, D. (1988). Handicapped children in developing countries: Assessment, curriculum and instruction. Edmonton, AB, Canada: Faculty of Education, Publication Services, University of Alberta. Describes a Task Importance Rating Scale (attached) for evaluating the relative importance curricular goals.

b) Focus on mutually agreeable solutions; ask people to think of each other's concerns.

"Do you think this suggestion answers his concerns?"

Sixth Problem: How would you cope with naive, selfish or unfair solutions?

(Discussion)

Some considerations

There are several methods of coping with naive, selfish or unfair solutions.

a) Ask the individual if he thinks his suggestion considers specific concerns raised by other members of the group.

b) Ask the individual to consider the legal, ethical, moral or human rights issues of the solution.

c) Ask the individual to think about the advantages and disadvantages of the suggestion.

d) Ask him/her to consider the possible consequences of the solution.

e) Caution should be taken to insure that the questions and directions given by the mediator do not antagonize the speaker, lead him to believe that you are taking sides or lead him to take a defensive posture and a firm stand in favor of his suggestion.

A mediator may have responded in the following manner.

"John, I wonder if you could adapt your suggestion; think of its advantages and try to incorporate some of the ideas suggested by Margaret and Bill; Take a little time to think about it, we'll get back to you later."

Stage four: Agreeing to solutions

a) How would you cope with someone who resists agreement or adopts an extreme position.

Some considerations

Remind the disputants of the problems associated with making compromises from extreme positions rather than responding to each others concerns.

Remind the disputants of other, less attractive, dispute resolution procedures; e.g., the parent has the right to legal proceedings if a satisfactory solution is not reached.

If agreement is not reached try Fisher and Ury's "One text procedure" move to Arbitration.

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